In the Supreme Court

of the United States

OCTOBER TERM, 1966

No. 391

STATE FARM FIRE AND CASUALTY COMPANY and GREYHOUND LINES, INC.,
Petitioners,

v.

KATHERINE TASHIRE, EVA SMITH, HARRY SMITH, LILLIAN G. FISHER, BARBARA McGALLIAND, DORIS ROGERS, GAIL R. GREGG, RICHARD L. WALTON, heir of SUE WALTON, and DONALD WOOD,
Respondents.

BRIEF AMICUS CURIAE

MARK C. McCLANAHAN,
1200 American Bank Building,
Portland, Oregon 97205,
Counsel for Amicus Curiae.

KING, MILLER, ANDERSON, NASH & YERKE,
Attorneys at Law,
1200 American Bank Building,
Portland, Oregon 97205,
Of Counsel.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 1-67

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PAGE

SUBJECT INDEX

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES (Cont.)

BLANK

PAGE

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BRIEF AMICUS CURIAE

Brief Amicus Curiae filed on behalf of the following attorneys at law who represent defendants-claimants in the case of General Fire and Casualty Company v. Greyhound Lines, Inc., et al, in the United States District Court for the District of Oregon, Civil No. 66-205:

ANDERSON & GEARY, Oakland, California; BERKLEY, RANDALL & HARVEY, Berkeley, California; McDANNELL BROWN, Portland, Oregon; DEVIN, HUTCHINSON & PETERSON, Seattle, Washington; GORDON & RIPPLE, Spokane, Wash-

ington; HOBERG, FINGER, BROWN & ABRAMSON, San Francisco, California; KING, MILLER, ANDERSON, NASH & YERKE, Portland, Oregon; GEORGE LUOMA, Roseburg, Oregon; MIROYAN, MOORE, KRICHEBERG & PITAGORA, San Jose, California; MORGAN, BEAUZAY, WYLIE, FERRARI & LEAKY, San Jose, California; AGNESS PETERSON and GEORGE VAN NATTA, St. Helens, Oregon; QUACKENBUSH, DEAN, BESCHEL & SMITH, Spokane, Washington; REITER, DAY & WALL, Portland, Oregon; ROETHLER & DUNN, Kelso, Washington; SABIN, DAFOE & NEWCOMB, Portland, Oregon; WILLIAM F. SCHULTE, Portland, Oregon; PETER C. STERNBERGER, San Francisco, California; TOOZE, POWERS, KERR, TOOZE & PETERSON, Portland, Oregon; TRUEHAFT & WALKER, Oakland, California.

INTEREST OF AMICUS CURIAE

The several attorneys making up Amicus Curiae are attorneys for many of the injured and representatives of decedents who received injuries or died as a result of a Greyhound bus accident which occurred December 23, 1965, near Medford, in southern Oregon. Their clients and all of the other potential claimants from the accident have been named as parties defendant in a case filed in the United States District Court for the District of Oregon, *General Fire and Casualty Company* v. *Greyhound Lines, Inc.*, et al, Civil No. 66-205. The case was filed under the Federal Interpleader Act (28 U.S.C. Sec. 1335).

The plaintiff in that case is a liability insurer which wrote the primary liability insurance coverage (with policy limits of $500,000) covering the operations of Greyhound Lines, Inc.

Since April 12, 1966, all the actual or potential claimants in that case have been enjoined by the court from prosecuting their cases against Greyhound; the relief sought by the plaintiff and Greyhound in that case is that all claimants be required to try their cases in that one case on the alleged ground that the policy limits are insufficient to cover all possible claims.

Amicus Curiae are interested in the decision to be rendered in the case at bar because it will necessarily have an important impact on their pending case and also on their practice of law in personal injury cases. They seek to bring to the attention of the Court additional circumstances and consequences of any decision in this case which should receive consideration by the Court in reaching its decision and writing its opinion.

The more specific purposes or requests of Amicus Curiae are set forth in the Preliminary Statement, below. Certain facts involved in their case and similar cases are cited throughout the brief in order to provide this Court with a clearer view of the significance of its decision.

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SUMMARY OF ARGUMENT

1. Allowance of the interpleader relief sought would cause an unwarranted extension of federal jurisdiction and give the tort-feasor and insurer an unwarranted advantage in choosing the forum.
2. Allowance of the interpleader relief sought here may produce a pattern of liability insurance coverage bringing numerous cases to the federal courts.
3. The remedy here sought should be restricted to cases in which there is a legitimate doubt of the sufficiency of the tort-feasor's assets.
4. Provision should be made for claimants to waive or deny any claims to the proceeds of the policy and thereby disprove their status as adverse claimants.
5. All of the interpleader purposes of the statute and Rule 22 may be fulfilled by limiting the injunction to proceedings against the insurer.

ARGUMENT

Preliminary Statement

In the western United States, and perhaps in other parts of the nation, liability insurance companies faced with multiple-claim personal injury situations have recently filed cases similar to this one seeking to invoke federal interpleader jurisdiction un-

der the Federal Interpleader Act (28 U.S.C. Sec. 1335 and 2361) or Rule 22(1) of the Federal Rules of Civil Procedure. In form such actions seek to determine the proper division of the insurance proceeds on the ground that the liability of the insured *may* exceed the policy limits. However, the relief sought is *not only* protection of the insurance company from possible double liability but also the litigation in that forum and that case of the validity and amounts of all personal injury or wrongful death claims that have been or might be asserted against the insured. Typically, all liability of the alleged tort-feasor insured (and consequently of the insurer), is denied.

Some of the cases—apparently all but one of the reported cases — have involved situations in which there was or is a substantial possibility that the valid claims of the injured might exceed the combined total of the policy limits and the assets of the insured. In such cases either some valid claims may have to go unsatisfied or the insurance company will have to pay more than its policy limits, so the court might well be called upon to prorate or otherwise divide the insurance proceeds. The case at bar is such a case because the policy limits are only $20,000 and the asserted claims exceed $1,000,000 (R. 4). Although Petitioner Greyhound Lines, Inc., has adequate assets, there is a real possibility that it and its own driver are not liable at all and that the only party liable is the insured, defendant Clark, who was the driver of a pickup involved in a collision with the

Greyhound bus. The record does not indicate whether Clark's assets could satisfy any of the claims.

In a second category of cases recently filed, however, the division-of-insurance-proceeds justification for this procedure is, at most, theoretical, and, in reality, nonexistent. For instance, in the case in which these Amicus Curiae are involved[1] there was no other vehicle. The accident involved only a Greyhound bus. The only alleged tort-feasors are Greyhound Lines, Inc., and its employee driver; and the record conclusively establishes that Greyhound's net worth is "substantially more . . . than necessary to satisfy all known claims asserted . . ."[2] Furthermore, in that case (1) the plaintiff insurance company is a wholly owned subsidiary of The Greyhound Corporation, as also is the insured-tort-feasor, Greyhound Lines, Inc., and (2) there is excess liability insurance with an insurer not involved in the case.[3]

If cases in the second category just described are allowed to succeed, Amicus Curiae foresee a major, inappropriate and unwise innovation in the law of personal injury litigation and in the writing of liability insurance.

Amicus Curiae sought and obtained authority from this court to file this brief because of their con-

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[1] *General Fire and Casualty Company* v. *Greyhound Lines, Inc., et al,* in the United States District Court for the District of Oregon, Civil No. 66-205.

[2] See Appendix A.

[3] *Ibid.*

cern that the peculiarly narrow issues presented in the case at bar might result in a decision which would not furnish appropriate guidance to the lower courts faced with many questions raised by these kind of cases: On the one hand the decision could leave all the broader more fundamental issues completely unresolved. At the other extreme, the case might result in an opinion interpreted as having ruled upon some of the broader issues when the facts of this case do not provide an appropriate vehicle for ruling on all of them.

This case could well be resolved on the narrow issue, to be raised in this court for the first time in Respondents' Brief, of the lack of personal jurisdiction over some of the adverse claimants who are Canadian citizens and on whom the only service of process was made in Canada, and that without following the service provisions of 28 U.S.C. § 2361.[4]

On the other hand, the broad issue as tendered by Petitioners and the opinion of the Court of Appeals concerns jurisdiction over the subject matter — whether this kind of action can ever be brought under the Federal Interpleader Act or Rule 22(1) of the

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[4] See R. 73-86. The history of the Federal Interpleader Act, beginning with *New York Life Insurance Co.* v. *Dunlevy* (1916) 241 U.S. 518, shows that we are dealing here with an *in personam* liability, not an *in rem* proceeding. So, personal jurisdiction over all the claimants to the so-called "fund" is essential. See generally, 3 *Moore's Federal Practice* (2d. ed.) Par. 22.06, pp. 3034-3040. The insurance company-plaintiff having failed to obtain that jurisdiction, the action should fail and, consequently, the decision below for dismissal should be affirmed.

Federal Rules of Civil Procedure.[5] Although the Court of Appeals answered the question in the negative, it is our understanding that it was neither briefed nor argued in that court.

Of course, this court could simply reverse that decision on the ground that there can be situations in which some kind of interpleader relief is available and remand the case to the Court of Appeals for consideration of all other issues. However, for the reasons stated below, we urge that any reversal should be in one of two forms:

(1) It should be narrowly circumscribed so as not to be susceptible of the interpretation that all such interpleader actions may be brought and that all the relief obtained here is approved, regardless of the assets of the alleged tort-feasors-insured, regardless of the actual or probable adversity of the claimants to the "fund" and regardless of the relationship of the insurer and insured; or

(2) It should take account of what the insurance companies and common carriers are *really* trying to accomplish in this case, and indicate some guidelines or limitations for this truly major development in multiple-injury litigation and federal jurisdiction.

We believe there are a number of practical and

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[5] See Pet. Br. p. 2 and *Tashire, et al,* v. *State Farm Fire and Casualty Company and Greyhound Lines, Inc.* (9 Cir., 1966) 363 F.2d 7, 10.

legal considerations which demonstrate the inappropriateness of the use of interpleader jurisdiction in this kind of case when there is no question of the sufficiency of the insured's assets to respond to all the claims. In practical effect allowance of interpleader, at least with all the results sought, causes an adverse shift in procedure, favorable to the insurers and unfavorable to the claimants. We believe such shift would be an unwarranted extension of federal jurisdiction; would be subversive of important state policies; would not improve judicial administration; and is contrary to the language of the Federal Interpleader Act and Rule 22(1).

I

Allowance of the Interpleader Relief Sought Would Cause an Unwarranted Extension of Federal Jurisdiction and Give the Tort-feasor and Insurer an Unwarranted Advantage in Choosing the Forum

The most important relief obtained in the case at bar and that sought in the cases recently filed is an injunction against all the personal injury and wrongful death claimants or potential claimants, restraining them from filing or prosecuting actions against the *insured* except in the case in which the interpleader action is filed. Inasmuch as the forum is ordinarily chosen by the personal injury plaintiff, the availability of the interpleader remedy would shift that right to the defense.

Some of the advantages that the defense seeks to

obtain by this procedure and the reasons why they should not be given are the following:

1. *Wrongful Death Limitation and Measure of Damages.* Probably the principal motivation for the defense wishing to select the forum is to obtain the most favorable wrongful-death limitation or measure of damages. Thus, in the case at bar, the accident occurred in Northern California. The injured were residents of California, Oregon, Washington, South Dakota and Canada, and the dead were residents of Washington and Canada (R. 2, 3). California verdicts are notoriously higher than those in the other states and California has no limitation on the recovery for wrongful death. Invoking the provisions of 28 U.S.C. Sec. 1397 authorizing venue in statutory interpleader to be laid in any district in which one of the so-called adverse claimants resides, the plaintiff insurer filed in the District of Oregon — a state in which personal injury verdicts are relatively low and which has a $25,000 limitation on recovery for wrongful death.[6]

Then in the case in which Amicus Curiae are involved, the accident occurred in southern Oregon; the 14 dead and 25 or more injured were from California, Oregon and Washington. Again Greyhound's insurer filed in the District of Oregon—the only one of the three states with a limitation on recovery for wrongful death.

In most of the states of the Union the question of

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[6] Ore. Rev. Stat. 30.020.

the choice of law for the damages recoverable for wrongful death when there are "contacts" with more than one state is unresolved, and such is the case in Oregon. Under the trend of recent decisions, if a wrongful death action is brought in the courts of the decedent's residence, that court is entitled under some circumstances to apply its own rule as to limitation or non-limitation of recoveries for wrongful death.

Kilberg v. Northeast Airlines, Inc. (1961) 9 N.Y.2d 34, 172 N.E.2d 526.

Pearson v. Northeast Airlines, Inc. (2 Cir., 1962) 309 F.2d 553, cert. den. 372 U.S. 912.

Babcock v. Jackson (1963) 12 N.Y.2d 473, 191 N.E.2d 279, 95 A.L.R.2d 1.

See Speiser, Recovery for Wrongful Death (Lawyers Coop. 1966) pages 721-731.

As stated in *Babcock* the trend is to give controlling effect to "the law of the jurisdiction which, because of its relationship or contact with the occurrence *or the parties*, has the greatest concern with the specific issue raised in the litigation." (191 N.E.2d at p. 283; emphasis ours.)

If the policies underlying these decisions are worthy of respect, and we believe they are, they should not be circumvented by allowing the defense to choose a forum which lacks "the greatest concern with the specific issue raised." The right to resort to the courts exists for providing a proper remedy. It is wrong to sacrifice this objective in the name of efficiency.

The result of allowing the erstwhile defense to select a federal forum in multiple-claim cases is to give

the federal courts the task of charting the course of *state policy* with respect to this important question of conflicts of law. The determination of such issues by the federal courts is not their proper role.

Klaxon Co. v. Stentor Electric Mfg. Co. (1941) 313 U.S. 487.

See also the opinion of Chief Judge Henley in Underwriters at Lloyd's v. Nichols (D.C. E.D. Ark., 1966) 250 F. Supp. 837, 840-841 (rev'd. 363 F.2d 357).

It is even more inappropriate for a federal court of one district to deprive the courts of another state or district of the right to determine such policies.

There are also differences in the measure of damages in such actions which are subject to similar considerations.

Speiser, supra pp. 721-730, 739.

2. *Chance of Finding Non-Liability of Insured.* Petitioners decry the allowance of the "haphazard trial of separate suits" which may reach different results on the question of liability and urge the "substantial savings" which may result from consolidating 35 personal injury trials via interpleader (Pet. Br. pp. 27, 31). Closer examination of the problem, however, indicates that their suggested cure may be worse than the disease.

In the first place, there are important state policies on the question of liability which, like those on the measure or limit of damages, may be circumvented

by allowing the insurer-defense to select the single forum.

See Babcock v. Jackson (1963) 12 N.Y.2d 473, 191 N.E.2d 279, 95 A.L.R.2d 1.
Macey v. Rozbicki (1966) 18 N.Y.2d 289, 221 N.E.2d 380.

Again, uniformity is not necessarily a desirable or proper objective.

Second, a single trial may impede the sound policy of encouraging voluntary settlements by inducing the insurer faced with a very weak defense to take a one-in-ten chance of relieving itself of liability by going to trial. And it may be expected that no holds will be barred and no expense forgone in the preparation and trial of the insured's case. Claimants, lacking a single manager for their litigation and already at a disadvantage because of their financial limitations, are placed in a more unfavorable position. Thus, trials of multiple-injury cases would become virtually certain and settlement would be discouraged.

Amicus Curiae believe that the Oregon case in which they are involved again furnishes an illustration: The Greyhound bus spun out of control December 23, 1965, on a new Interstate Highway, for no apparent reason other than excessive speed under adverse weather conditions. Greyhound's liability seems probable. Prior to the time it and its affiliate corporation-insurer (or their common parent corporation) decided upon the interpleader course of action, Greyhound was diligently engaged in seeking settlements,

and in fact accomplished three settlements.[7] Since April 12, 1966, when its insurer obtained a restraining order against all possible claimants from prosecuting pending and possible cases, no known settlement discussions have taken place. Indeed, they have been expressly refused on the ground that the existence of the restraining order makes them "impossible," but that, if the other cases are allowed to proceed, settlement discussions will be had.[8]

It is obvious that the courts as we know them could not function if it were not for the fact that something over 95 percent of the personal injury and death claims are settled prior to trial.[9] We therefore submit that Petitioners' proposed use of the Interpleader Act to improve judicial administration in personal injury litigation would not accomplish that objective but would interfere with the important policy favoring settlements.

3. *Jury Trial.* Petitioners say (Pet. Br. pp. 33-36) that allowance of this remedy and requiring the trial of all the claims in an interpleader case will not deprive the claimants of a jury trial. We are not so sure, and the cases cited in Petitioners' Brief support our concern. Petitioners' concession is heartening but un-

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[7] See Appendix B.

[8] See Appendix C.

[9] See Herman, "Legal Costs to Insurance Companies and How They Can Be Reduced," Ins. Law Jour. No. 494, pp. 133, 145 (March, 1964); Doryland, "Legal Costs to Insurance Companies—a Second Look," Ins. Law Jour., No. 502, pp. 652, 662 (November, 1964); and Appleman, "A Speedier Remedy in Personal Injury Cases," Ins. Law Jour., No. 476, pp. 551, 559 (September, 1962).

fortunately it is not binding on other insurers who may be expected to make the opposite contention in future cases.

In any event, it is apparent that the "jury trial" Petitioners have in mind is not the same one the claimants are ordinarily entitled to—an unhurried thoughtful deliberation by a jury regarding one or two persons' injuries or loss, as opposed to a "three ring circus" of 35 cases with 20 or 30 lawyers in which the jury may be intimidated by the volume and complexity of the issues and the overwhelming amounts of money involved.

4. *Convenience of Trial.* We disagree with Petitioners' estimate that the insurer's choice of forum through the use of interpleader in personal injury cases will cause inconvenience to the claimants "only infrequently." (Pet. Br. p. 38). The statement simply ignores plain facts of life—that the cost of litigation is of vital concern to both claimant and insurer and is frequently used as a powerful weapon.

There are important reasons for not disturbing the present rule under which the claimant chooses the the forum most convenient to him. He does not expect to be injured and has no reason to make financial preparations for trial elsewhere. On the other hand, the defense fully expects such cases and, like the insurer and Greyhound involved in this case, can usually defend about as readily in one state or court as another. That was the risk they intended to assume when they went into business and the organizational

efforts and arrangements made for it are, indeed, elaborate and expensive.

In summary, allowing the interpleader remedy with all the consequences sought by Petitioners would shift to the insurer-defense the power to select the forum in multi-state, multi-injury situations. It would circumvent the right of states to enforce important state policies regarding rules of liability and damages (most notably the wrongful death limitation) and would frequently and inappropriately involve federal courts in determining these policies. Settlements would be discouraged and the trial of weak defenses would become virtually certain. The jury trial would be eliminated or seriously diluted and the convenience of trial would be made to suit those least in need of it.

II

Allowance of the Interpleader Relief Here Sought May Produce a Pattern of Liability Insurance Coverage Bringing Numerous Cases to the Federal Courts

We urge the court to consider whether, if this remedy is approved to the extent of requiring all the personal injury claims to be tried in the single case, such will be the signal for a major innovation in the liability insurance business and a substantial shift of personal injury litigation to the federal courts.

Again an illustration is the Oregon case in which Amicus Curiae are involved. As discussed below the record of that case establishes that the policy limits

of the primary insurer (the interpleader-plaintiff) is only $500,000 but that Greyhound has excess liability insurance and that such insurance or Greyhound's assets alone are more than sufficient to satisfy all known claims. That record also establishes that the institution of the interpleader action "was agreed upon in advance by plaintiff and The Greyhound Corporation or defendant Greyhound Lines, Inc., as a means of furthering the interests and purposes of all or both of them * * *."[10]

Greyhound is involved in the case at bar and two other similar cases known to us[11] and it is obvious that it is very interested in establishing the insurance companies' right to interplead. Why? Because it would benefit *its own* claims handling business.

Furthermore, carried to its logical conclusion, petitioners' proposal would allow virtually every other business operation and its insurers to structure the insurance coverage so as to virtually guarantee that a federal interpleader case could be filed whenever there were two or more significant injuries: By writing an initial policy in one insurer for very low limits, and excess coverage in a different company, the same coverage could be provided and all or many of the procedural advantages here sought could be obtained. Under the Federal Interpleader Act, all that is said

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[10] See Appendix A.

[11] These two are the Oregon case in which Amicus Curiae are involved and the Louisiana case, *Travelers Indemnity Company* v. *Greyhound Lines, Inc.*, et al, (D.C. W.D. La., 1966) 260 F. Supp. 530 (Adv. Sh.).

to be required is two or more claimants who reside in different states and whose combined claims exceed the limits of the *primary* insurer. For cases involving residents of only one state, the only diversity of citizenship required by Rule 22(1) is between the insurance company plaintiff and the other parties.

So also, large organizations which would ordinarily be self-insurers could obtain policies with nominal limits and thereby secure the same advantages with respect to claims of much greater importance than the insurance policy which furnishes the formal justification for invoking the "interpleader" procedure.

We submit that to allow the *form* of the equitable remedy of interpleader to be used for this *collateral* purpose is to allow the tail to wag the dog.

III

The Remedy Here Sought Should Be Restricted to Cases in Which There is Legitimate Doubt of the Sufficiency of the Tort-feasor's Assets

The Federal Interpleader Act expressly requires that there be "adverse claimants" who "are claiming or may claim" the same fund (28 U.S.C. § 1335(a)(1)). Rule 22(1) applies only if the interpleader-plaintiff "is or may be exposed to double or multiple liability." We agree with Petitioners (Pet. Br. p. 23) and the Eighth Circuit (*Underwriters at Lloyds* v. *Nichols* (8 Cir., 1966) 363 F.2d 357, 365-366) that these words mean about the same thing. We submit, however, that the statute and rule speak of a *real*

possibility of adversity and a *real* possibility of double liability.

Thus, in *Commercial Union Insurance Co. of New York* v. *Adams* (S.D. Ind., 1964) 231 F. Supp. 860, claims for 70 deaths and 300 injuries must surely have exceeded the primary and excess insurance and the assets of the insureds, for the court found the claimants "adverse" to each other and compared the situation to "100 persons adrift in the ocean with but one small life boat in sight" and said "each claimant is interested in reducing or defeating the claim of every other claimant." (231 F. Supp. at 863). In *Pan American Fire & Casualty Company* v. *Revere* (D.C. E.D. La., 1960) 188 F. Supp. 474, the court found that the claimants "are *in fact* competing for a fund which is not large enough * * *." (188 F. Supp. at pp. 480-481; emphasis ours).

In *Underwriters at Lloyds* v. *Nichols* (D.C. E.D. Ark., 1966) 250 F. Supp. 837, rev'd. 363 F.2d 357, the District Court denied interpleader against several cotton farmers who claimed against one crop sprayer on the ground that the claims against the *insurer* were "doubly contingent." The second contingency, after liability of the insured, was "it developing that [the insured] is not financially able to satisfy judgments against him or to reduce them to an aggregate sum" within the policy limits (250 F. Supp. at pp. 840-841). The Eighth Circuit reversed and emphasized the "*may be* exposed to double or multiple liability" terminology of Rule 22(1) and the

"may claim" terminology of 28 U.S.C. Section 1335 (a)(1). However, the court's opinion still leaves the reader with the distinct impression that it was concerned with the real, though not immediate, possibility of double liability of the insurers arising from the insufficiency of the insured's assets; and it emphasized that the claimants were *really* seeking the insurance money. (See 363 F.2d at p. 364.)

As mentioned above, if the proposed remedy is approved without limitation to realities, Greyhound and other larger organizations may utilize ridiculously low policy limits for the very purpose of obtaining the procedural advantages here at stake. Yet how can it be said straightfacedly that any claimant cares about or seeks the $500,000 policy written for Greyhound by its sister corporation? In such case the requisite adversity is absent and there isn't a scintilla of possibility that the insurer will have to pay more than its policy limits.

IV

Provision Should be Made for Claimants to Waive or Deny Any Claim to the Proceeds of the Policy and Thereby Disprove Their Status as Adverse Claimants

If a theoretical rather than actual possibility of adversity of the claimants is all that is required under the statute or rule, there would appear to be no escape from the dire consequences of forum-shopping predicted above. Yet a court of equity with the power to consolidate 35 personal injury cases in the name of

interpleader must surely have the power to allow conditional relief from its order.

Amicus Curiae therefore propose that in any reversal of the decision below the court's opinion should save the right of a claimant who wishes to renounce any possible future claim against the insurer to make that election, and be enjoined from making such claims.

It is true that such waiver or disclaimer could not be binding as between the insurer and insured and that the insured undoubtedly would retain the right to require its insurance carrier to discharge its obligations under the policy. The point is, however, that the insured's rights would be limited to those specified in the policy and such procedure would guarantee against double liability of the insurer. And the "possibility" of double liability was the only justification for the interpleader procedure in the first place.

V

All of the Interpleader Purposes of the Statute and Rule 22 May Be Fulfilled by Limiting the Injunction to Proceedings Against the Insurer

Amicus Curiae concede that there can be situations in which it would be desirable to divide the insurance proceeds under court supervision rather than on a race-to-the-courthouse, first-come, first-served basis. Their difficulty with Petitioners' proposed solutions is that they go far beyond the necessities of the case —and are calculated more to reduce the claims than to divide insurance proceeds.

With Respondents, Amicus Curiae urge to the court that the golden mean solution has been charted by the decision of the District Court in *Travelers Indemnity Company* v. *Greyhound Lines, Inc., et al* (D.C. W.D. La., 1966) 260 F. Supp. 530 Adv. Sh. (now on appeal to the Fifth Circuit), which found some jurisdiction but decided it was limited to the fund. Consequently it restricted the remedy to enjoining the claimants from levying or proceeding against the insurer without further leave of court.

The result reached also accords with that proposed by Professor Chafee in 1940 with respect to the proper scope of a decree in interpleader:

> "... automobile accident claims are peculiarly appropriate for jury trial. Hence, when an automobile liability insurance company is allowed to interplead, the law actions of the victims should be allowed to proceed for the purpose of determining such issues as negligence, contributory negligence, and the extent of the damage, with the insurance company fighting its best. Judgments at law against the insured will then be entered on the verdicts. But the enforcement of those judgments against the insurance company and its property should be enjoined. The judgment creditors should be left to get payment from the fund in court, either ratably or according to some scheme of priority imposed by the court in accordance with prior local decisions." (Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. J. 377, 420-421)

CONCLUSION

Any decision of the court in this case, other than an affirmance on the ground of failure to obtain personal jurisdiction over the Canadian residents, will have an important impact on personal injury litigation practice and procedure and the judicial administration of such cases. Amicus Curiae recognize that there are cases in which liability insurers should be entitled to invoke federal interpleader jurisdiction in advance of determination of the liability of the insured. However, even in such cases the relief should be restricted to enjoining proceedings against the insurer and the subsequent division of the fund, if necessary.

Interpleader jurisdiction should not be transformed into a device to obtain injunctions against prosecution of ordinary tort actions in forums selected in the usual manner. Such transformation would cause an unwarranted and inappropriate extension of federal jurisdiction, circumvent the enforcement of important state policies and eliminate or seriously dilute the claimants' procedural rights.

Amicus Curiae urge the court to take note of the foregoing in its opinion.

Furthermore, the court's opinion should hold that the interpleader remedy is not available at all in cases in which excess liability insurance or the insured's assets are obviously sufficient to satisfy all claims. Alternatively, it should provide for a disclaimer by any

claimant who claims no benefits under the insured's liability policy and is satisfied to look only to the insured.

Respectfully submitted,

MARK C. McCLANAHAN
Counsel for Amicus Curiae

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APPENDIX

APPENDIX A

"IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

GENERAL FIRE AND CASUALTY COMPANY, a corporation, Plaintiff, v. GREYHOUND LINES, INC., a corporation, et al. Defendants.	Civil No. 66-205 ANSWER TO REQUESTS FOR ADMISSIONS OF FACTS BY DEFENDANT GREYHOUND LINES, INC.

"Comes now defendant Greyhound Lines, Inc. and makes the following responses to the requests for admissions of facts of defendants Charles C. Van Vlake, Lynton C. Spink and Mary Ann Burke:

"Request 1 (a)

'Plaintiff and defendant Greyhound Lines, Inc., are both wholly owned subsidiaries of the Greyhound Corporation, a Delaware corporation.'

"Answer to Request 1 (a): Admitted.

Request 1 (b):

'The chairman of each of the boards of directors of plaintiff, The Greyhound Corporation, and defendant, Greyhound Lines, Inc., is F. W. Ackerman and the president and

chief executive officer of the Greyhound Corporation, G. H. Trautman, is a member of plaintiff's board of directors.'

"Answer to Request 1 (b): Admitted.

* * * * *

"Request 2 (a):

'The institution of this proceeding was agreed upon in advance by plaintiff and the Greyhound Corporation or defendant Greyhound Lines, Inc., as a means of furthering the interests and purposes of all or both of them and Greyhound Lines, Inc., supports and does not oppose the relief sought by plaintiff herein.'

"Answer to Request 2 (a): Admitted.

* * * * *

"Request 4 (a):

'Defendant Greyhound Lines, Inc., has substantially more net worth than is or may be necessary to satisfy all known claims asserted against it, including those which have been or are likely to be asserted arising from the accident of December 23, 1965, described in the complaint herein.'

"Answer to Request 4 (a): Admitted."

"Request 4 (b):

'At the time of said accident defendant Greyhound Lines, Inc., had and now has in effect other liability insurance with respect to claims arising from said accident which, when added to the coverage afforded under the policy described in the complaint and the net worth of said defendant, is substantially

more than is or may be necessary to satisfy all known claims asserted against said defendant, including those which have been or are likely to be asserted arising from the accident of December 23, 1965, described in the complaint herein.'

"Answer to Request 4 (b): Admitted."

APPENDIX B

"IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

GENERAL FIRE AND CASUALTY COMPANY, a corporation,	)	Civil No. 66-205
Plaintiff,	)	PLAINTIFF'S ANSWERS TO INTERROGATORIES
v.	)	
GREYHOUND LINES, INC., a corporation, et al.	)	
Defendants.	)	

"Plaintiff answers the interrogatories of defendant Lynton C. Spink, individually, and Lynton C. Spink as administrator of the estate of Zella Jane Spink, deceased, as follows:

* * * * *

"INTERROGATORY NO. 7: State the names and addresses of every claimant and the amount of each and every claim that has been paid by the General Fire and Casualty Company as damages to either the person or property arising out of the Greyhound bus accident occurring on or about December 23, 1965, at or near Medford, Oregon, and which is the subject matter of this action.

"ANSWER: None. There have been several claims arising out of this bus accident that have been settled prior to the time that the interpleader

suit was filed. These settlements, however, will be for the account of Greyhound Lines, Inc., since the filing of the interpleader suit and bond in the policy limit of General Fire and Casualty Company."

* * * * *

APPENDIX C

Letter from attorneys for Greyhound Lines, Inc., to attorneys for Robin Cox, et al, one of the claimants named as defendants in General Fire and Casualty Company v. Greyhound Lines, Inc., et al.

"CARROLL, DAVIS, BURDICK & MCDONOUGH
Counselors and Attorneys at Law
420 Balfour Building
San Francisco, California 94104
Telephone (415) 981-0380

September 9, 1966

"Mr. Malcolm Bernstein
Treuhaft & Walker
Attorneys at Law
1440 Broadway
Oakland, California 94612

Re: Robin Cox, et al. v. Greyhound

"Dear Mr. Bernstein:

"Your communications of August 16 and September 6, 1966, have been received. I was on vacation from early August to just the last day or so and have not therefore been earlier able to respond.

"The problem with regard to any possible settlement of any of the claims arising out of this accident is simply this—Greyhound's insurer in this case, namely, the General Fire and Casualty Company of New York, has filed an interpleader action in the Federal District Court in Oregon and I am sure that you and your client have been

served with papers in this matter. I understand they have deposited a bond in the full amount of their policy in the sum of $500,000.00 to be distributed by the Federal District Court amongst the various claimants, if the court should decide that this is a case of liability. At the same time, the court has enjoined everybody from taking any action whatever with regard to the matter and it appears to me, therefore, that settlement of the case is impossible at the present time.

"You may also have been advised that in a very similar type proceeding a similar restraining order was reversed by the United States Circuit Court but a petition for writ of certiorari has been directed to the United States Supreme Court seeking a review of the matter. The court has not yet acted upon the application for the writ. I am also led to understand that if the Supreme Court does not give any assistance in that case that the Federal District Court intends to vacate the restraining order in this action, at which time it would be possible to discuss settlement.

"I trust that this sufficiently explains our inability to enter into any fruitful negotiations at this time. We will certainly keep the matter in mind and when, as and if it becomes possible, will be in touch with you.

Very truly yours,

CARROLL, DAVIS, BURDICK & MCDONOUGH
/s/ J. D. BURDICK"